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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUL 1 - 1992

Federal Communications Commission  
Office of the Secretary

In re Applications of	)	MM DOCKET NO. 92-111
DEAS COMMUNICATIONS, INC.	)	File No. BPH-910208MB
DRAGONFLY COMMUNICATIONS, INC.	)	File No. BPH-910211MA
HEALDSBURG BROADCASTING, INC.	)	File No. BPH-910211MB
BECKWITH COMMUNICATIONS, INC.	)	File No. BPH-910211MI
DESERT ROCK LIMITED PARTNERSHIP	)	File No. BPH-910211ML
HEALDSBURG EMPIRE CORPORATION	)	File No. BPH-910212MM
For Construction Permit for a	)	
New FM Station on Channel 240A	)	
in Healdsburg, California	)	

To: Administrative Law Judge  
Edward J. Kuhlmann

OPPOSITION TO PETITION TO ENLARGE ISSUES

Deas Communications, Inc. ("Deas"), by its attorneys and pursuant to Sections 1.229 and 1.294 of the Commission's Rules, hereby opposes the Petition to Enlarge Issues filed June 19, 1992 by Healdsburg Broadcasting, Inc. ("HBI") The HBI Petition, seeking addition of a site availability issue against Deas, is procedurally and substantively defective and should be dismissed or denied.

In support whereof, the following is shown.

No. of Copies rec'd  
List A B C D E

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I. The Petition violates Section 1.106 of the Rules

1. Annexed hereto as Exhibit 1 is a May 29, 1991 Petition to Deny the applications of Deas and two other applicants, filed prior to designation by William J. Smith, a Healdsburg attorney. Minimal scrutiny of this filing (sometimes referred to hereinafter as the "Smith Petition") and its attachments reveals its substantial factual identity to HBI's Petition:

- \* Like HBI's, the Smith Petition alleges that the Sonoma County Board of Zoning Adjustments ("BZA") is unlikely to grant Deas permission to build its proposed transmitting facilities;
- \* Like HBI's, the Smith Petition supports its claim by adverting to the denial by the BZA of a proposal by Fuller Jeffrey Broadcasting;
- \* Like HBI's, the Smith Petition refers to supposed "public opposition" to such proposals and includes a local newspaper article announcing the rejection of the Fuller Jeffrey proposal (which was for a much higher tower five miles away from Deas').

The only substantive difference between the Smith and HBI Petitions is the identity of the local attorney whose declaration is offered in support.<sup>1</sup> Otherwise, HBI's

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<sup>1</sup> As is discussed in Section III, below, while both Mr. Smith and HBI's pinch-hitter Willard A. Carle III hold themselves out as having familiarity with local zoning affairs, their declarations demonstrate a common lack of first person knowledge of what the BZA will do, an additional ground for dismissal of HBI's Petition.

Petition is factually identical to the Smith Petition filed more than a year ago in this proceeding.

2. The Hearing Designation Order, 57 Fed. Reg. 21984, published May 26, 1992, discusses in detail the allegations in the Smith Petition at para. 5, analyzes apposite FCC precedent and summarily rejects it at paras. 6-7, 19. HBI's Petition is in all respects a request for reconsideration of the HDO denial. It substitutes the hearsay declaration of attorney Carle for the hearsay declaration of attorney Smith, but is otherwise the same petition and seeks the same relief.

3. Section 1.106(a)(1) of the Rules states, inter alia:

A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained. . . . (Emphasis added.)

4. HBI's Petition is an improper request for reconsideration in the guise of a petition to enlarge. It should therefore be dismissed.

## II. The Petition contravenes the "Atlantic Doctrine"

5. Beyond question, the HDO's disposition of the Smith Petition against Deas and other applicants constitutes a reasoned analysis of the matter. It is black letter FCC law

that where a designation order contains a reasoned analysis of a particular matter, presiding officers are constrained from revisiting it, absent the presentation of additional and previously unknown information. Atlantic Broadcasting Co., 5 FCC 2d 717, 8 RR 2d 991, 996 (1966). No new or previously unknown information is contained in HBI's Petition.

6. Because it contravenes the doctrine enunciated in Atlantic Broadcasting and consistently followed since 1966, the Petition should be dismissed.

III. The Petition fails to meet the specificity requirements of Rule 1.229(d)

7. Section 1.229(d) of the Commission's Rules mandates that enlargement motions "contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof. . . ."

8. HBI's Petition fails this test. To support its charges HBI relies (in lieu of Mr. Smith) on the Declaration of Mr. Carle, on some general BZA documents previously provided in connection with the Smith Petition and which do not allege that the BZA will disapprove Deas' tower, and on a newspaper article concerning the Fuller Jeffrey site (similar to an article

contained in the Smith Petition. None of this evidence conforms to the requirements of Rule 1.229(d).

9. Mr. Carle does not pretend to be "a person . . . having personal knowledge" of what the BZA will do when it passes on Deas' proposal after grant of Deas' application. At para. 5, he says that in "my opinion, it is improbable if not impossible for Deas to get approval from the BZA for its proposed site." He admits that Deas' proposed 69-foot tower "is not the same height [407 feet] as that proposed by Fuller Jeffrey," fails to mention that Deas' site is about five miles from Fuller Jeffrey's, does not claim to have spoken about the proposal with any member of the BZA, and fails to support his allusion to "the predictable outpouring of opposition by the Dry Creek Valley Association," with any specific evidence. Mr. Carle's Declaration is a compendium of generalities, laden with terms like "problematic," "unlikelihood," "improbability," and bereft of hard facts. Mr. Carle hasn't a clue about what the BZA will do here.

10. The Fuller Jeffrey newspaper article is meaningless. Besides having nothing to do with this proposal, the article is inadmissible hearsay. It is well settled that such articles cannot support a request for issue enlargement. The Baltimore Radio Show, Inc., 4 FCC Rcd 6437, 6439 para. 14

(Rev. Bd. 1989), citing CBS, Inc., 49 FCC 2d 1214, 1223 (Rev. Bd. 1974).

11. Since the Petition fails the Rule 1.229(d) specificity test, it should be dismissed.

#### IV. The Petition is wrong on the facts

12. Appended hereto as Exhibit 2 is the Declaration of Mario Edgar Deas. It and the included Appendices speak eloquently for themselves and need little summarizing. Mr. Deas reverifies the truth and accuracy of the Declaration he provided the Commission on June 21, 1991 in response to the Smith Petition. He has personally contacted Sonoma County Planner Sigrid Swedenborg, who assured him that the BZA evaluates every tower request individually and on its own merit, and has made no determination yet about Deas' proposal.

13. Mr. Deas also reveals, in contradiction to Mr. Carle's claim that the Dry Creek Valley Association will rise up in protest against his proposal, that he has met with the Association in early 1991 at a public meeting, presented photographs of the site and explained why the 69-foot tower will have minimal visual or other impact, and received no Association opposition.

14. As Mr. Deas explains, there are profound differences between his proposal and that of Fuller Jeffrey. His tower is much lower, is five miles away from that locale,

would be hidden by the contiguous trees and will not require lighting or other characteristics that will disturb the beauty of the area or offend those living nearby.<sup>2</sup>

15. With respect to the BZA guidelines for tower approval alluded to by Mr. Carle (and earlier by Mr. Smith), Edgar Deas attests that he will be able to meet them. He would not pursue the proposal if he were not confident that it would work and provide optimal FM service to Healdsburg.

16. Based upon the first person testimony of Edgar Deas, HBI's Petition should be denied.

V. Under the settled law, the Petition must be denied

17. As the HDO cogently concludes, at para. 7, the law of the case is clear and well established. "Where a broadcast applicant has reasonable assurance of site availability from the owner of the site, but requires zoning approval from a government entity to use that site, the applicant need not demonstrate such actual approval before the Commission grants a construction permit. San Francisco

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<sup>2</sup> Appended to Mr. Deas' Declaration as Appendix II is an newspaper article to which Mr. Deas also alludes in his 1991 Declaration. It describes the construction in 1990, after 1988 BZA approval, of a 72-foot tower more akin to Deas' 69-foot tower proposal than the 407-foot Fuller Jeffrey tower. While this newspaper article is likewise not admissible evidence, it affords the Presiding Judge anecdotal information confirming that the BZA is not a monolithic body which simply strikes down all communications tower proposals, whatever their merit may be.

Wireless Talking Machine Co., 47 RR 2d 889, 893 (1980)." There is no dispute that Deas has reasonable assurance of site availability and HBI does not contend otherwise.

18. Absent a reasonable showing that the local zoning officials will not approve a proposal, site availability is presumed and issues will not be added based on a mere difference of opinion as to whether local officials will sanction the site. Sunshine Broadcasting, Inc., 1 FCC Rcd 174 para. 6 (1986), citing Gainesville Media, Inc., 59 FCC 2d 382, 385 (Rev. Bd. 1976); Alden Communications Corp., 102 FCC 2d 518, 520 (Rev. Bd. 1985); Radio Ridegfield, Inc., 47 FCC 2d 106, 110 (Rev. Bd. 1974) (Commission is reluctant to add site issues based on predictions of local counsel or individual zoning commission members). Even where one zoning board member states that approval is unlikely, the Commission will not customarily specify site issues. Edward G. Atsinger, 29 FCC 2d 443, 551 (Rev. Bd. 1971); Lester H. Allen, 20 FCC 2d 478, 481 (Rev. Bd. 1969); see also Midwest Cable & Satellite Co., 1 FCC Rcd 746, 747 (CC Bur. 1986).

19. Accordingly, under the law HBI's Petition must be denied.

#### CONCLUSION


20. Deas has established: that HBI's Petition violates Commission Rule 1.106; that it contravenes the

"Atlantic Doctrine"; that it fails the Rule 1.229(d) specificity test; that it is factually inaccurate; and that under the law of the case the Petition cannot be granted.

WHEREFORE, for these reasons, HBI's Petition to Enlarge Issues must be dismissed or denied.

Respectfully submitted,

DEAS COMMUNICATIONS, INC.

By:   
Lawrence Bernstein  
F. Joseph Brinig

Its Attorneys

BRINIG & BERNSTEIN  
1818 N Street, NW  
Suite 200  
Washington, D.C. 20036

(202) 331-7050

Attachments

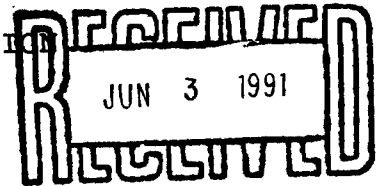
July 1, 1992

EXHIBIT 1

May 29, 1991 Petition to Deny  
filed by William J. Smith

HALEY, BADER &amp; POTTS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.



WASHINGTON, D.C.

In Re Applications of  
DEAS COMMUNICATIONS, INC.

File No. 910208MB

LINDA D. BECKWITH

File No. 910211MI

DRAGONFLY COMMUNICATIONS, INC.

File No. 910211MA

RECEIVED

Application For FM  
Construction Permit for New  
FM Channel 240A, 95.9 MHz  
Healdsburg, California

JUL 1 - 1992

Federal Communications Commission  
Office of the Secretary

To: Secretary,  
FM Branch

PETITION TO DENY

I, WILLIAM J. SMITH, respectfully petition the Commission to  
deny the above-referenced applications.

INTRODUCTION

1. I reside at 1401 Big Ridge Road, Healdsburg, California.  
Deas Communications, Inc. (hereafter "Deas") has filed an FCC Form  
301, Application for a New FM Broadcasting Station, Ch. 240A, at  
Healdsburg, California. My property is adjacent to the property  
proposed by Deas as the site for its transmitting antenna in its  
application, and is in view of the proposed tower site.

2. Linda D. Beckwith (hereafter "Beckwith") has filed an FCC  
Form 301 for the same station, proposing a transmitting antenna  
site on property on the next ridge to the south of and in view of

1 my property.

2 3. Dragonfly Communications, Inc. (hereafter "Dragonfly")  
3 has filed a FCC Form 301 for the same station, proposing a  
4 transmitting antenna on a site which is in view of an access road  
5 serving my property and is probably in direct view of my property  
6 because the proposed tower is approximately 400' high with flashing  
7 lights.

8 4. These three applications should be denied for the reason  
9 that there is no reasonable assurance that any of these  
10 applications will obtain permission from the County of Sonoma for  
11 the construction of the proposed transmitting antenna, and related  
12 facilities.

13 5. The site for the proposed transmitting antenna of Deas  
14 is located at the highest point on Big Ridge in Sonoma County,  
15 California, overlooking the scenic Dry Creek Valley, which is one  
16 of the world's premier grape-growing areas. Big Ridge is a virtual  
17 wilderness area, with no commercial development of any kind. The  
18 Deas antenna would be erected in a lovely grove of redwoods.

19 6. The Beckwith antenna site is directly across Wallace  
20 Creek from Big Ridge, in similarly unspoiled terrain.

21 7. The Dragonfly tower, at some 400' height, would be one  
22 of the tallest, if not the tallest, structures in Sonoma County,  
23 looming over the Dry Creek Valley.  
24

1           8.    Surrounding these three sites are some of California's  
2   loveliest rolling hills, studded with oaks and madrone, redwoods  
3   and firs. The properties surrounding the sites are used only for  
4   livestock grazing, some agriculture and open space. There are few  
5   homes, and they are widely spaced. The entire area is an important  
6   wildlife habitat. This area is one of the most beautiful and  
7   pristine places that anyone is likely to visit in a lifetime. Of  
8   these facts there is, and can be, no dispute.

9           9.    Recognizing the unique scenic and aesthetic value of Big  
10   Ridge, Wallace Creek and the areas encompassing Dry Creek Valley,  
11   the County of Sonoma, which is the local authority having  
12   jurisdiction over the proposed antennas, has designated the  
13   proposed antenna sites and all surrounding property as Resources  
14   and Rural Development in the Sonoma County General Plan, adopted  
15   in 1989.

16           10. Pursuant to the mandate of California law (Government  
17   Code Section 65860), the Sonoma County Zoning Ordinance, effective  
18   August 9, 1990, has designated the subject antenna sites and all  
19   surrounding properties as Resources and Rural Development (RRD),  
20   consistent with the General Plan.

21           11. This petition to deny will demonstrate that there is no  
22   reasonable assurance that any of these applicants will obtain  
23   required Sonoma County permission for their proposed antennas.  
24

1                   The Antennas Are Inconsistent With The General Plan.

2           12. Commercial uses, such as the proposed transmitting  
3 antennas, are inconsistent with the Sonoma County General Plan.  
4 Attached hereto as Exhibit "A" and made a part hereof is a true  
5 copy of Section 2.8.1 of the Sonoma County General Plan entitled  
6 Policy for Resources and Rural Development Areas. A commercial  
7 radio transmitting tower is clearly inconsistent with said policy.  
8 Because California State law (Government Code Section 65860)  
9 requires zoning decisions to be consistent with the General Plan,  
10 none of the proposed antennas could be legally approved at the  
11 sites designated in the respective FCC Forms 301.

12           13. An additional indication of the basic incompatibility of  
13 commercial transmitting antennas with the General Plan is found in  
14 Section 3.3 on the Healdsburg and Environs planning area, which  
15 recognizes "The unique agricultural, resource, scenic, and  
16 recreational value of this planning area", which, again, is  
17 inconsistent with transmitting antennas.

18                   The General Plan Interim Criteria

19           14. Further, the Sonoma County General Plan contemplates the  
20 formation of specific guidelines for the establishment of  
21 communication and transmission towers. Attached hereto as Exhibit  
22 "B" is a true copy of Policy PF-2u from the Sonoma County General  
23 Plan. The Zoning Ordinance (Section 26-256(u)) allows radio  
24

1 transmission towers "subject, at a minimum, to the criteria of  
2 general plan policy PF-2u", so there must be a showing by the  
3 applicant that the applications would:

- 4 a) serve a demonstrated public need;
- 5 b) include a statement explaining why use of  
existing tower facilities is infeasible;
- 6 c) minimize, to the extent feasible, impacts  
on biotic and scenic resources;
- 7 d) include an analysis of alternative sites,  
explaining why the proposed site results in  
fewer or less severe environmental effects  
than feasible alternative sites.

8 15. Obviously, none of the applicants has yet made a showing  
9 before the local authorities that these criteria have been met.  
10 Nor can such a showing be made. The crux of the matter is that  
11 there are several feasible, alternative sites that are already  
12 developed for such transmission and communication towers, so that  
13 the applications must necessarily be denied under the General Plan.  
14 These alternative, developed sites include Mt. St. Helena and  
15 Geyser Peak. In fact, one of the other applicants for this very  
16 station, Healdsburg Broadcasting Co., purposes its tower on Mt.  
17 Jackson, in an existing, developed communications area. Clearly,  
18 if Mt. Jackson is a feasible site, the three applications at issue  
19 would have to be denied by the local authorities. The application  
20 of Healdsburg Broadcasting Co. is the only application before the  
21 Commission which could be lawfully approved under the General Plan.

22 / / /

23 / / /

1           A Similar Application Was Recently Denied By Local  
2           Authorities, Thus Establishing Precedent To Deny These  
3           Three Applications.

4           16. Commission policy is that a site availability  
5           determination will not be based solely on lack of prior approval  
6           by the local governmental authorities, unless, as here, there is  
7           a "reasonable showing" made by the petition to deny that approval  
8           is "improbable". Salinas Broadcasting Limited Partnership 5 FCC  
9           Red. 1613. (1990).

10          17. Not only does the foregoing analysis of local and state  
11          law make a reasonable showing that approval is "improbable", there  
12          is little need for speculation because there is a recent Sonoma  
13          County precedent demonstrating that approval is, indeed,  
14          "improbable".

15          18. Only last year, an application by Fuller Jeffrey  
16          Broadcasting for a radio transmitter tower for FM Station KHTT at  
17          2300 Big Ridge Road, Healdsburg, in close proximity to the proposed  
18          Deas site, was unanimously denied (5-0) by the Sonoma County Board  
19          of Zoning Adjustments for the reasons set forth above in this  
20          petition. Attached hereto as Exhibit "C" is a copy of the Sonoma  
21          County Planning Staff Report for the January 25, 1990 Board of  
22          Zoning Adjustments meeting, outlining the issues and the staff's  
23          recommendation of denial. Attached hereto as Exhibit "D" is a copy  
24          of a news article from the Santa Rosa Press Democrat reporting the

1 strong public opposition to the Fuller Jeffrey proposal. There is  
2 no reason to suppose that public opposition to the instant  
3 applications will be any less this year than last. Therefore, as  
4 in Teton Broadcasting Limited Partnership 1 FCC Red 518, 519  
5 (1986), the foregoing constitutes a reasonable showing that none  
6 of these three applicants will be able to obtain approval of their  
7 plans from the local authorities.

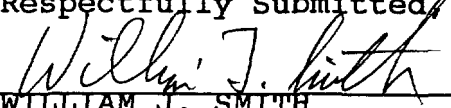
8 Conclusion

9 19. These three applications each fly in the face of local  
10 land use policies which are binding under state law. Because there  
11 are alternative sites for transmitting antennas which are already  
12 developed with communications facilities (Mt. Jackson, for  
13 example), these three applications should be denied.

14 I certify that the statements in this Petition to Deny are  
15 true and correct to the best of my knowledge and belief, and are  
16 made in good faith.

17 DATED: May 29, 1991

Respectfully Submitted,

18   
19 WILLIAM J. SMITH  
Attorney At Law  
In Propria Persona  
20 P. O. Box 6655  
Santa Rosa, CA 95406

## 2.8.1 POLICY FOR RESOURCES AND RURAL DEVELOPMENT AREAS

**Purposes and Definition:** This category allows very low density residential development and also is intended to:

1. protect lands needed for commercial timber production under the California Timberland Productivity Act.
2. protect lands within the Known Geothermal Resource Area (KGRA).
3. protect lands for aggregate resource production as identified in the Aggregate Resources Management Plan.
4. protect natural resource lands including, but not limited to watershed, fish and wildlife habitat and biotic areas.
5. protect against intensive development of lands constrained by geologic hazards, steep slopes, poor soils or water, fire and flood prone areas, biotic and scenic areas, and other constraints.
6. protect lands needed for agricultural production activities that are not subject to all of the policies of the Agricultural Resource Element.
7. protection of County residents from proliferation of growth in areas in which there are inadequate public services and infrastructure.

It is further the intent of this category that public services and facilities not be extensively provided in these areas and that development have the minimum adverse impact on the environment.

**Permitted Uses:** Single family dwellings, resource management and enhancement activities including but not limited to the management of timber, geothermal and aggregate resources, fish and wildlife habitat, and watershed. Livestock farming, crop production, firewood harvesting and public and private schools and churches are included. Lodging, campgrounds, and similar recreational and visitor serving uses provided that they shall not be inconsistent with the purpose and intent of this category. The extent of recreational and visitor serving uses may be further established in planning area policies.

The category also allows resource related employee housing, processing facilities related to resource production as well as incidental equipment and materials storage, provided that the use is consistent with any applicable resource management plans. Geothermal uses are limited to the primary KGRA. Aggregate resource uses are limited to those consistent with the Aggregate Resources Management Plan.

**Permitted Residential Densities and Development Criteria:** Residential density ranges from 20 to 320 acres per unit as shown on the land use maps. In general the higher densities are applied in areas with relatively less constraints, better access, closer proximity to some services, and existing parcels in that range. Lower densities are generally applied in areas with more severe constraints, high sensitivity to impacts, poor access, greater distance to services and/or high resource development potential. Minimum parcel size for

new parcels is 20 acres, except that clustered development may be approved with a protective easement or other restriction on the remaining large parcel which indicates that density has been transferred to the clustered area from the remaining large parcel. Standards and densities for resource related employee housing shall be established in the zoning ordinance.

Public schools must meet the minimum criteria set forth in policy LU-6e on page 47. Private schools and churches must meet the minimum criteria set forth in LU-6f on page 48.

**Designation Criteria:** Amendments to add this designation must meet one or more of the following, in addition to any applicable planning area policies:

1. lands with severe constraints such as steep slopes, areas with faults or landslides, "high" or "very high" fire hazard, marginal or unproven water availability, or limited septic capability.
2. lands with natural resources.
3. lands with vulnerability to environmental impact.
4. to add lands for geothermal power generation facilities, the following criteria must be met;
  - a) agricultural lands or other land uses will not be adversely affected.
  - b) the natural resources of the area will be protected.
  - c) adequate public services, including roads, will be available.

### ~~3.0 PLANNING AREA POLICIES~~

#### 3.1 SONOMA COAST / GUALALA BASIN

The Sonoma Coast/Gualala Basin planning area runs the 40 mile length of the Pacific Coast margin from the Gualala River to the Estero Americano. In addition to several coastal communities, it extends inland to include Annapolis, Cazadero, Duncans Mills, Bodega, Freestone, Camp Meeker, and Occidental. Roughly paralleling the San Andreas Fault Zone, the rugged Sonoma Coast is a scenic area of regional, state, and national significance, with nearly vertical sea cliffs and sea stacks along the shoreline, dunes, marine terraces, coastal uplands, and headlands. In the north, the Gualala River South Fork extends inland into the coniferous forests of the western Mendocino Highlands.

This planning area is also the most sparsely populated of the nine planning regions due to its relative remoteness and inaccessibility. In 1980 the 5,400 residents mostly lived in the various small villages. Outside of these communities, rural settlement is very sparse. The region's economy is primarily oriented to recreation and tourism, commercial fishing, timber production, and sheep ranching. Residences, originally planned as second homes, including Sea Ranch and Bodega Harbor, are not increasingly occupied by permanent residents.

~~PF-2s: Public utility facilities other than transmission line corridors may be designated as "Public/Quasi-Public" on the land use map. Allow consideration of minor facilities in any land use category where they are compatible with neighborhood character and preservation of natural and scenic resources.~~

~~PF-2t: Review proposals for new transmission lines or acquisition of easements for new transmission lines for consistency with general plan policies. Request wherever feasible that such facilities not be located within areas designated as community separators or biotic resource areas. Give priority to use of existing utility corridors over new corridors.~~

PF-2u: Review proposals for new radio, telephone or other communication and transmission towers for consistency with general plan policies. Prepare siting and design guidelines for such facilities. Until these guidelines are adopted, require that proposals for new tower sites:

- a) serve a demonstrated public need,
- b) include a statement explaining why use of existing tower facilities is infeasible,
- c) minimize, to the extent feasible, impacts on biotic and scenic resources, and
- d) include an analysis of alternative sites, explaining why the proposed site results in fewer or less severe environmental effects than feasible alternative sites.

~~PF-2v: Consider requiring the undergrounding of new electrical transmission and distribution lines where appropriate in designated open space areas and in selected urban areas. Where feasible and under the Public Utility Commission (PUC) rules, convert existing overhead lines to underground facilities in urban areas.~~

PF-2w: Encourage consolidation of multiple utility lines into common utility corridors wherever practicable.

PF-2x: Utilize development fees to require that new development pay for its share of needed infrastructure as identified in existing and future Capital Improvement Plans prepared by the county.

# STAFF REPORT — BZA



SONOMA COUNTY DEPARTMENT OF PLANNING

575 Administration Dr., Room 105A, Santa Rosa, California 95401  
(707) 527-2412

FILE: UP 89-785

DATE: January 25, 1990

TIME: 3:40 p.m.

Appeal Period: 12 calendar days

STAFF: Sigrid Swedenborg

## SUMMARY

Applicant/Owner: Fuller Jeffrey Broadcasting

Location: 2300 Big Ridge Road, Healdsburg  
APN 090-090-25 & 111-130-14 : Supervisorial Dist. No. 4

Subject: Use Permit

PROPOSAL: Erection of a 407 foot high radio transmitter tower.

Env. Document: Negative Declaration

General Plan: Resource & Rural Development, 120 acre density

Zoning: A1 (Primary Agriculture), BS (Slope Density), Table 40

Ord. Reference: Section 26 - 28 (z)

RECOMMENDATION: Exempt the project from CEQA for the purpose of denial and deny the request.

## ANALYSIS

### Project Description:

The applicant is requesting a use permit to install a 407 foot high radio transmitter tower. A 20 X 20 foot equipment building is also part of the request. No structures for human occupancy are proposed. The site would be visited once a week by one employee, and may need to be serviced by a fuel truck for the proposed generator.

The proposed tower is a 3 sided metal structure, each side is 24 inches in width. The actual transmitting antennae projects 6 to 8 feet outward from the top 30 feet of the tower.

The Federal Aviation Administration (FAA) requires that the tower be lit with aircraft warning lights.

The applicants currently have a transmitter tower located on Geyser Peak.

### Site Analysis:

The 39 acre parcel is located on Big Ridge Road, south of West Dry Creek Road in the Healdsburg area. The site is very steep ranging from about 680 feet above sea level to 1,320 feet above sea level. The proposed location of the tower is at 1,200 feet above sea level.

EXHIBIT "C"

The property has been logged and is transected with old logging roads. It is heavily vegetated with fir trees and brush.

Surrounding Land Use and Zoning:

Land use in the project vicinity is very rural. Parcel sizes range from 40 to 467 acres. Most of the parcels are completely undeveloped. Zoning is A1 (Primary Agriculture), BS, slope density restrictions.

DISCUSSION OF ISSUES

Issue #1: Visual Impact

The main environmental impact that results from this project is visual. The ridge on which the tower is proposed to be located is the highest in this area. Staff has done an analysis and determined that the tower could be visible from Dry Creek Road. The tower is located 2 1/2 miles "as the crow flies" from the closest point on Dry Creek Road. The structure is physically closer to West Dry Creek Road, but that road is too close to the hills to be able to see above them.

At 24 inches wide, it is questionable if the tower could actually be seen 2 1/2 miles away. The tower will be lit which increases its potential visual impact.

The nearest house to the site is over 1/2 mile away. Some of the residences located below the site, between Dry Creek Valley and the ridgetop will be able to see the tower but there are very few residences that would be impacted. It is highly unlikely residences on the other side of the ridge, gaining access off of Mill Creek Road and Wallace Road, would see the tower due to that mountainous terrain.

Issue #2: General Plan Consistency

The Sonoma County General Plan, adopted in March of 1989, has specific policies that relate to the proposal (PF-2U). The Plan suggests that siting and design guidelines be established for communication and transmission towers. These guidelines have not been developed yet. Such guidelines might include a maximum height limit and policies which identify appropriate areas for clustering of towers in the County. The Plan does state that until guidelines are adopted, four (4) criteria should be used for analyzing towers. These criteria with the applicants response follows:

Proposals for new tower sites must;

- 1) Serve a demonstrated public need.

Applicant's response: This radio tower will be used to transmit FM signals for Station KHTT to the greater Santa Rosa area. In addition to providing listening entertainment, the station provides emergency information to the public in circumstances of earthquakes, floods and wild fires.

Staff Analysis: Although this may be true, numerous other radio stations provide similar services.

- 2) Include a statement explaining why use of existing tower facilities is infeasible.

Applicant's response: The existing tower on Geyser Peak is not situated so as to provide the broadcast range opportunity which will be afforded by the site proposed in this application.

Staff Analysis: Applicants have not indicated why Geyser Peak is not well situated nor indicated the new broadcast range to be generated by the proposed tower.

- 3) Minimize, to the extent feasible, impacts on biotic and scenic resources.

Applicant's response: The 39 + acre parcel is zoned to permit a variety of uses involving human habitation. The radio tower will require no residential use and negligible site preparation. The tower and a proposed 400 square foot equipment building will be the only facilities to be constructed. This is far less intense than what would be required to prepare the site for a dwelling, driveways, septic system, etc., thus minimizing the potential impacts on biotic and scenic resources.

Staff Analysis: It is likely that a single family dwelling would have more impacts on biotic resources than the proposed tower. It is unlikely, however, that a 16 - 35 foot high residence would have more impacts on scenic resources than a 407 foot high lit tower.

- 4) Include an analysis of alternative sites, explaining why the proposed site results in fewer or less severe environmental effects than feasible alternative sites.

Applicant's response: There could be numerous other sites with some of the characteristics which the proposed tower site possesses. These include elevation, orientation, accessibility, availability, remoteness, and a low population density in the vicinity. The site selected for this proposal presents the greatest number of positive characteristics of several ranked highest in suitability, which resulted in the decision to submit the application on this site.

Staff Analysis: Any alternative site analysis completed by the applicant has not been submitted to the Planning Department. No alternative sites have been specifically identified.

### Issue #3: Interference

The Dry Creek Valley Association has responded to the referral with a concern about the tower's transmissions interfering with radio and TV signals.

The applicant has responded to their concerns with a letter and copies of FCC rules (attached). They state that with proper operation, there is little or no interference with other FM stations. They must remedy any problems. Apparently the area primarily susceptible to interference is a 1.35 mile radius around the tower. There is one home within that radius.

They also state that interference with TV receivers is extremely rare, again, they are responsible by FCC rules to assume full financial responsibility for remedying complaints of interference.

#### Issue #4: Tower Lighting

Marking and lighting of the tower is controlled by the Federal Aviation Administration (FAA). Towers over 200 feet high are required to be lit.

The applicant states that they have two (2) options. 1) Painting the tower in alternate orange and white bands with flashing beacons at the top and mid point levels with obstruction lighting in between the beacons or 2) White strobe obstruction lights at the top and mid point levels. No painting of the tower is necessary if the white strobe lights are used. These would be lit day and night.

The applicant's radio engineering consultant has stated that the white strobe lights are shielded toward the ground but are highly visible for aircraft and have his recommendation.

#### Issue #5: Aircraft Safety

The Sonoma County Airport Land Use Commission (ALUC) has reviewed the proposal and adopted resolution #89-41 finding the proposal consistent with the Airport Policy Plan. Their resolution is attached to this report. They found that the tower will not intrude in the airspace of flight operations at Healdsburg Municipal Airport and is away from normal flight paths. They also found that FAA marking, lighting and notification is required and they suggested a condition (which has been applied) to mark the tower support wires.

The California Department of Forestry has responded to the referral with a concern about aircraft safety. They state that their activities with wildfire air attack requires low level flights often below 400 feet above the ground. These flights would be for making airtanker fire retardant drops and to deliver fire crews and water by helicopter. This area is in a high fire hazard zone.

The California Department of Forestry has requested that high intensity strobe lighting be placed on the tower which would be lit during both day and night.

They are concerned about this project.

#### Issue #6: Utilities

There is no electric power available to the site currently. The applicant has stated that they would use a generator full time until they could get electric service. A generator would be located at the site for service during power loss anyway.

This rural area has a very low ambient noise level and generator's noise could have a significant impact.

A condition has been suggested to be added to any approval of the project to insure that construction of the building housing the generator includes noise attenuation methods.

#### Issue #7: Precedence:

The proposed tower could set a precedent both in terms of height and continued dispersal of tower locations.

##### Height:

The proposed tower will be the highest structure in the County.

The applicant has stated that they want to relocate to the site to expand their customer base. The tower is proposed to be located on the north side of the ridge, away from Santa Rosa where the station is based. There is a knoll about 200 feet south of the proposed tower location that is 1,429 feet above sea level. It seems that part of the reason the tower is to be 407 feet high is to project above that knoll. Another location might allow for less height with the same result.

##### Tower Dispersal:

Requests for new transmission towers have increased significantly over the last few years. Since 1985 the County has processed three requests for cellular phone antennae which generally range in height from 80 to 100 feet. More significantly, the County has also processed requests for seven other radio towers ranging in height from 160 to 250 feet.

Rather than utilizing the existing tower site on Geyser Peak, where several other antennae are located, the applicants propose to open up a whole new area of the County for transmission.

If this area is found to be exceptional for locating transmitter towers, other stations may follow suit.